



Bill Position

Board of Regents - University of Wisconsin System

2009-10 Legislative Session

AB597

UW System Property Acquisition by Condemnation

LEGISLATION

(Vruwink) **relating to:** requiring the University of Wisconsin System to obtain the approval of the Joint Committee on Finance (JCF) in order to acquire property by condemnation.

This bill requires the Board of Regents to notify the JCF whenever it intends to acquire property by condemnation. The notice must describe the project, explain its public purpose, specify the status of and schedule for construction, and identify the funding for the project.

The bill requires JCF to schedule a public hearing on the intended condemnation, and requires the entire membership of the Board of Regents, Board staff and UW System Staff to attend the hearing.

After the hearing, the Board must provide a written response to all questions asked at the hearing by JCF members and members of the public.

The bill prohibits the Board of Regents from acquiring property by condemnation unless the committee approves the condemnation by at least a three-quarters vote, taken by roll call.

If the condemnation is approved, the Board must provide JCF with periodic reports as it proceeds with the project.

AB 597: Referred to the Assembly Committee on State Affairs and Homeland Security (11/24/09).

UW SYSTEM POSITION

OPPOSE: The Board of Regents strongly opposes arbitrary limitations imposed on the UW System's statutory condemnation authority. The legislation significantly impairs the University's ability to fulfill its mission. Furthermore, it may expose taxpayers, students, and donors to unnecessary financial risk.

State agencies, counties, municipalities, school districts, and utilities use statutory condemnation authority to acquire property needed to serve a defined public purpose. State Statutes provide for rigorous judicial oversight of this process, allowing property owners the right to an impartial review, and ensuring that all agencies that use this authority are held accountable. This legislation ignores that time-tested process that avoids politicization of this process. It creates a redundant mechanism in which legislators would adjudicate disputes between property owners and certain educational institutions.

The Board of Regents last used this authority in the early 1960s to acquire land for a dormitory complex at UW-Madison. In 1990, the Board of Regents voted to authorize the use of this power, but later negotiated a mutually agreeable sale price with property owners. During the same period, dozens of other public and entities have exercised condemnation powers much more frequently. In June 2008, the Board voted to authorize use of eminent domain for two properties – land needed for a project that was included in the State's 2007-09 Capital Budget. One of the two properties was later acquired at a fair-market price.

Ignoring the University's record of restraint with this authority, this legislation singles out UW System, requiring additional hearings, specific attendance requirements, and additional reporting requirements. It effectively eliminates the Board's power to condemn.

The Regents have regarded condemnation as a last resort, for use in rare instances when they are unable to negotiate the purchase of a critical piece of property at a fair market price.

Just as UW campuses are struggling to accommodate record numbers of students, this legislation would impair the University's ability to acquire property at fair-market value to make room for new facilities.



STATE REPRESENTATIVE

JOSH ZEPNICK

WISCONSIN STATE ASSEMBLY

Testimony on Assembly Bill 597

December 17, 2009

Assembly Committee on State Affairs and Homeland Security

State Representative Josh Zepnick

Chair Kessler and Members of the Assembly Committee on State Affairs and Homeland Security, while I am unable to attend today's public hearing, I did want to have testimony introduced to express my support for this legislation.

Current law gives an incredible amount of authority to the UW-System Board of Regents in their ability to acquire property, without proper oversight. While the Board must notify the Joint Committee on Finance when they intend to use their power of condemnation to acquire land, JFC currently has no ability to actually oversee, or prevent, the Board from using this power.

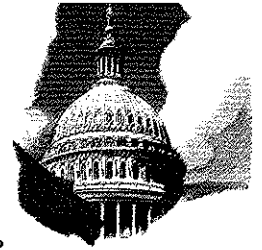
A government's condemnation and imminent domain powers should be used judiciously and, more importantly, rarely. Without adequate oversight, this power can, and will, be easily abused.

AB 597 is a common sense proposal to assure that all sides are being given an equal ability to show why, or why not, this property should be condemned and gives the Legislature the oversight necessary to approve, or disapprove, these actions. As we have seen with the banking industry, the removal of legislative oversight and governmental regulations has led to the long-term abuses that have devastated our economy. As the ability to own property, be it for a home or business, is one of our founding principals of citizenship, it is only right and proper that every voice is heard and a just, and fair decision made, when any unit of government acquires property for its own purposes.

I urge the members of this committee to vote to adopt this legislation and forward it onto the Assembly and Senate for final consideration.

Thank you,

Josh Zepnick
State Representative
9th Assembly District



Mike
HUEBSCH
STATE REPRESENTATIVE

TO: Representative Fred Kessler
Members, Assembly Committee on State Affairs
and Homeland Security

FROM: State Representative Mike Huebsch

DATE: December 17, 2009

RE: Support for AB 597, relating to oversight of the UW Board of Regents
private property condemnation authority.

As a co-author of Assembly Bill 597, I appreciate Rep. Kessler's willingness to hold a public hearing on this important issue and I thank all of you for the thoughtful consideration you give it today. Although I am unable to attend today's hearing, I wanted to share my thoughts and urge your support of AB 597.

I learned of the issue that prompted this bill from Marc and Eric Fortney who operate the Brothers Bar and Grill in the Cities of La Crosse and Madison. As you may know, the University of Wisconsin (UW) System condemned the Brothers Bar and Grill building on University Avenue to make way for an expanded School of Music building on the UW-Madison campus. The Board of Regents gave the okay for UW-System officials to use the powers of eminent domain for this purpose.

Government's power to condemn private property for a necessary public purpose is fundamental to carrying out its duties, but it should never be exercised lightly. The UW has used its power recklessly and its actions demand that the legislature act to prevent similar exploits in the future.

If the UW is going to start driving vibrant small businesses from their homes, we would all be wise to ask ourselves what's next? If the current system is left unchecked, it could lead to even more abuses down the road.

AB 597 would not strip the UW System of its eminent domain powers, but it would add a system of checks and balances in order to protect private property owners. Granting the Joint Committee on Finance oversight of condemnation decisions by the UW ensures that officials exhaust all options before seizing the property of small businesses or landowners. As long as the UW can demonstrate the public benefits of using this significant power over Wisconsin citizens, it will have nothing to fear from legislative oversight.

Thank you for considering my thoughts and concerns as you debate this proposal. If you have any questions please feel free to contact me.

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P.O. Box 8952, State Capitol • Madison, WI 53708-8952 • Telephone: 608-266-0631 • Toll-Free: 888-534-0094
E-mail: Rep.Huebsch@legis.wi.gov



WISCONSIN STATE ASSEMBLY
Christine Sinicki
STATE REPRESENTATIVE

TO: Members of the Committee on State Affairs and Homeland Security

FROM: Representative Christine Sinicki

DATE: December 17, 2009

RE: Assembly Bill 597

As a state legislator, my constituents' property rights are extremely important to me. Whether it has to do with their homes or their businesses, there are few issues that raise greater concern for me than when those rights are infringed on.

I believe that the power of eminent domain should be exercised only as a last resort. I also believe there is no doubt that government sometimes needs the ability to acquire land to be used for a public necessity. In fact, I have seen some of my constituents come up against this necessity in the past couple of years as the Department of Transportation (DOT) has negotiated to take homes for expansion of I-94. However, governmental agencies should exhaust all other options first and if they absolutely need the real estate, then a fair negotiation should always take place with the landowner.

When I heard about the condemnation approved by the UW System Board of Regents against Brothers Bar and Grill in Madison, I became very concerned about the horrible precedent it will set for other state agencies as well. As far as I can tell from the information I've gathered, condemnation of this property was anything but a last resort.

To add insult to injury, even though a reasonable agreement had been reached between the UW-Madison and the property owners, the Board of Regents chose to ignore it. And more disconcerting is that they did so even though even though neither the requisite plans nor funding are in place yet. And despite all this, a small business has been told to vacate its premises only four months from now.

I know this legislation won't help Brothers Bar and Grill in Madison, but it will protect other citizens and small businesses across the state (possibly in districts like mine, which is full of small businesses) from literally being bulldozed by the UW System. This bill will ensure that individuals and small businesses are dealt with fairly by the university campuses in all parts of the state.

Again, property acquisition is a necessary part of government. And that's why this bill does not take eminent domain authority away, it simply requires the Joint Finance Committee to provide oversight of such actions authorized by the Board of Regents.

I support this legislation and I am hopeful that this committee will too. Thank you for your consideration.



702 North High Point Road, Suite 203 • Madison, WI 53717
608-826-6226 • Fax 608-826-6236 • www.aascw.org

December 17, 2009

To: Members of the Assembly Committee on State Affairs and Homeland Security
From: Nancy Jensen, Executive Director, Apartment Association South Central WI

Re: AB 597 requiring the University of Wisconsin System to obtain approval of the Joint Committee on Finance in order to acquire property by condemnation

The Apartment Association of South Central Wisconsin (AASCW) represents more than 1,000 rental property owners throughout the state, many owning rental and commercial properties in UW campus communities.

Presently, the University of Wisconsin System (UW-System), as an entity of government, is afforded the use of condemnation without government oversight of their use of the process.

We believe very strongly from our own experiences related to the building of UW-System dormitory projects that this bill will provide much needed government oversight of the UW-System's enjoyment of government status and use of condemnation.

The needs based assessment and public hearing required in the bill are good public policy-- providing the public, property owners and legislators an opportunity to receive full disclosure and written response to discussion of any proposed project before the condemnation process could begin.

Presently, in any campus community in Wisconsin the UW-System can come in and take private property to build a dormitory using the condemnation process, without meeting any established 'needs based' criteria, and without consideration that a private property owner can fulfill the need and also retain the benefit of keeping the property on the tax rolls to support the tax base of the community and the state.

The UW-System's taking without full agreement of a private citizen's property is a concerning action and further exposes our industry's concern of UW-System use or abuse of condemnation for dormitory projects.

AASCW members throughout Wisconsin strongly support AB 597 to create this much needed legislative oversight, including the start of a needs based assessment/elected official scrutiny it will create and the three-quarters roll call vote it requires. UW-System condemnation of private citizen's property should not be permitted without affording the legislature and the public the oversight this bill provides.

FACT SHEET

BOARD OF REGENTS CONDEMNATION OF BROTHERS BAR AND GRILL MADISON LOCATION

Brothers Bar and Grill is a family owned establishment operating in Madison for approximately 15 years. The owners, Marc and Eric Fortney, grew up in La Crosse, Wisconsin and are UW-Madison alumni.

The first Brothers Bar and Grill was established in La Crosse in 1990, the Madison location was established soon after. Since then, the Fortneys have developed a total of 19 bar and grills in ten states with over 1400 employees. Brothers prides itself on locations on Big 10 conference campuses – the Madison location is the cornerstone of their effort.

Brothers Bar and Grill is known by campus police and patrons alike as one of the toughest “carding” bars on campus to ensure patrons are of legal drinking age. In 15 years, Brothers Bar and Grill has established itself as a good operator and has avoided repeated police calls and citations that have been a problem with other downtown bars.

The Fortneys leased the premises at 704 University Ave for about 11 years. The lease agreement contained a right of first refusal should a potential buyer offer to purchase the premises from their landlord.

In Fall 2006, this entire process was started when UW-Madison made such an offer to purchase the premises for \$1.985 million. In response to the UW-Madison’s offer, the Fortneys obtained the requisite financing and exercised their right of first refusal, purchasing 704 University Ave in December 2006 for the price offered by UW-Madison.

Soon after the Fortneys purchased the premises, they were approached by Al Fish, associate vice chancellor for facilities planning and management, at UW-Madison. Fish proposed, with the financial backing of the Wisconsin Alumni Research Foundation (WARF), to relocate Brothers Bar and Grill so the premises could be incorporated into loose plans for an expansion of the UW School of Music.

The Fortney brothers had no desire to relocate, but as good UW alumni, were willing to hear out the UW officials who promised they would be “made whole” and a “seamless transition” would occur from the current Brothers to a “new” Brothers. After several months of working with UW-Madison, as well as time and expenses incurred for architects and designs, the Fortneys reached a mutually acceptable relocation agreement with UW-Madison and WARF.

However, at the end of April 2008, Mr. Fish contacted the Fortneys to tell them that the UW System Board of Regents was rejecting the UW’s proposal and would not honor the relocation agreement negotiated in good faith by the parties. Soon thereafter, on June 16, 2008 the Board of Regents adopted Resolution 9522 authorizing use of their eminent domain power to condemn 704 University Avenue – Brothers Bar and Grill.

Since that time, the Board of Regents has refused to engage in discussions with the Fortneys and most recently filed a jurisdictional offer officially commencing the eminent domain action.

The jurisdictional offer is in the amount of \$2.1 million – only \$115,000 more than UW Madison offered for the premises 3 years ago. It does not include the relocation costs for Brothers or in any way propose to make the Fortney’s “whole” or provide for a “seamless transition” as had been promised by UW-Madison. To turn an empty building into Brothers Bar and Grill requires an investment of approximately \$1.5 million.

The Fortneys have filed a lawsuit against the Board of Regents requesting declaratory relief from the court providing that condemnation is not appropriate at this time for a project that has no timeline, no designs, and has not yet raised even half of the private financing that is needed to move forward. They are not challenging the \$2.1 jurisdictional offer.

To this day, the UW still has no designs, no timeline, nor the requisite funding to break ground on this project. Yet, this condemnation action forces Brothers Bar and Grill to vacate their premises on March 23, 2010.

The Fortney brothers continue to try and engage the UW System and the UW Board of Regents to work together in hopes of what they agreed to with UW-Madison and WARF – a mutually acceptable relocation agreement.



FACT VS. FICTION

The University of Wisconsin System Board of Regents attached a document to their November 10, 2009 response to Rep. Shilling which they titled "Fact Sheet: Acquisition of University Avenue Properties." Unfortunately, most of the information they provided as "facts," aren't. We offer the following additional information which we believe may provide members of the Wisconsin State Legislature with a fuller, and more accurate, understanding of what actually took place in the "acquisition" of our building and the potential destruction of our small family business here in Madison.

FICTION

The Regents allege that "The Fortneys purchased the property with full knowledge that the University was seeking to acquire the property for the Music Performance Facility project.

FACT

This statement is simply not true.

We bought the building when WARF's attempt to purchase the building triggered the "first right of refusal" clause in our lease and we decided we wanted to stay in a building that we cared about and that had proved to be an excellent location for our business. No one said anything about the UW's master plan or about needing the building for a Music Performance Facility.

The Regents make their case on the basis that they had held public hearings on the master plan, approved the master plan and told the news media about it in September 2005, all of which would only entitle them to argue that we should have known about it not to state categorically that we had "full knowledge" about it.

The fact of the matter remains that we did not know about it. With regard to the argument that we should have known about it, we would make three points.

- First, while it is possible that we were invited to the public hearings, we do not remember receiving such an invitation and did not attend any public hearings.
- Second, with regard to the Regents' approval of the plan, we were not noticed on, and do not normally review the Regents' agenda; so, once again were not in attendance when the master plan was approved.
- Third, with regard to the media coverage, while it may not speak highly of our reading habits, we did not see the coverage. We have tried in retrospect to review it and have not so far found any articles that reference tearing down our building to put up a music hall.

The Regents allege that "The University continued to negotiate both properties at fair market value, but those negotiations were unsuccessful."

The Regents' assertion conveniently fails to acknowledge that their decision to invoke their condemnation powers came in the wake of long and successful negotiations that had been concluded between the Fortneys and representatives of UW-Madison. Those successful negotiations produced an agreement between the Fortneys and the UW-Madison representatives that would have resulted in the UW gaining the Fortney's property at a fair price and Brothers Bar & Grill being relocated to a location that, while not ideal, the Fortneys had determined was acceptable. The Regents rejected this agreement, made no realistic counter offer and then condemned the Fortneys property. The Fortneys worked for more than a year and half to find a solution. Once the Regents got involved they went to condemnation within three months.



FACT VS. FICTION

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FICTION	FACT
<p>The Regents allege that "In August 2008, an independent appraisal valued the 704 University Avenue at \$1.1 million. The City of Madison assessed the property at \$682,000 in 2008."</p>	<p>Once again, the Regents conveniently fail to inform the reader that the Fortneys paid \$1.9 million for the property in 2005. More importantly, they paid \$1.9 million because WARF had offered \$1.9 million for the building and in order to successfully exercise their first right of refusal and purchase the property that housed their business, they had to match what WARF had offered for it. Clearly, the Fortneys would not have spent that sort of money for a building that they believed was going to be condemned within three years. The Fortneys do not know for sure why the city appraisal is low, but would hazard a guess that it has something to do with the realization that once it became common knowledge that the property was going to be acquired by the Regents, its value to a private buyer diminished.</p>
<p>The Regents allege that "In October 2008, UW-Madison announced that an anonymous donor had given \$20 million toward the Music Performance Facility, which will cover approximately 50% of the cost."</p>	<p>This assertion is, at best, inaccurate.</p> <ul style="list-style-type: none">• First, it is our understanding that the \$20 million number came from two donors, not one.• Second, it is also our understanding that none of the 'pledged' money has been given or deposited and in this economy, it might be prudent to confirm the pledges before asserting to a member of the Wisconsin Legislature that anyone had "given" \$20 million to UW-Madison.• Third, it is our understanding that recent estimates of the cost of the music hall could be higher than \$50 million, which would make \$20 million considerably less than "50% of the cost."
<p>The Regents allege that "On September 23, 2009, the University extended a jurisdictional offer of \$2.1 million to purchase the Brothers Bar property. Fortney LLP has accepted the University's jurisdictional offer, in affect agreeing that the offer represented just compensation for the property."</p>	<p>It is true that the Fortneys accepted the \$2.1 million jurisdictional offer. They had to do so in order to protect the only fair offer made by the Regents for the property, but it is critical to note that there are two issues here. One related to the value of the property, which apparently the Regents finally agreed was worth what the Fortneys had been saying it was worth all along. Second, however, is the unresolved question of what it will cost to relocate the Brothers Bar & Grill business. The Regents, perhaps unintentionally, refer in this assertion to the Brothers Bar property. It is not the Brothers Bar property. It is the Fortney property <u>and</u> the Brothers Bar & Grill business. One issue has been dealt with. The other has not.</p>

BROTHERS BAR & GRILL

For more information, go to www.brothersbar.com and click on "Madison."